San Francisco Bay Conservation and Development Commission
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November 30, 2018

TO: Commissioners and Alternates

FROM: Lawrence J. Goldzband, Executive Director (415/352-3653; larry.goldzband@bcdc.ca.gov)
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SUBJECT: **Staff Recommendation on BCDC Permit Application No. 2017.006.00, Bay Point Restoration Project by the East Bay Regional Park District in the Community of Bay Point, Contra Costa County**
(For Commission consideration on December 6, 2018)

Recommendation Summary

The Commission staff recommends approval, as conditioned herein, of BCDC Permit Application No. 2017.006.00 to the East Bay Regional Park District, for the Bay Point Restoration Project, located at the Bay Point Regional Shoreline at the terminus of McAvoy Road, in the community of Bay Point, Contra Costa County, which will result in:

1. Restoring and enhancing approximately 17.65 acres of tidal marsh and Bay waters by grading within an area diked-off from the Bay, excavating tidal channels, and breaching the existing berm; and
2. Improving an approximately 1.1-mile-long existing public access trail along the existing berms at the site and enhancing the approximately 1,700-foot-long existing Spur Trail leading to a new boat launch for small hand-launch boats.

Work within the Commission's jurisdiction is scheduled to commence in 2019.

Staff Recommendation

The staff recommends that the Commission adopt the following resolution:

I. Authorization

A. Subject to the conditions stated below, the permittee, the East Bay Regional Park District ("District" or "Permittee") is hereby granted permission to conduct activities, in the Bay and within the 100-foot Shoreline Band as part of the Bay Point Restoration Project, to restore, use, and maintain tidal marsh and install, use, and maintain public access within the Commission's jurisdiction by conducting the following activities partially located within an area designated as a "Waterfront Park, Beach" priority use area on the San Francisco Bay Plan Map No. 3, in the community of Bay Point, Contra Costa County.

In the Bay:

1. Place, use, and maintain approximately 8,096 cubic yards of material over an approximately 8,006-square-foot area to raise and widen a portion of the "Harrier Trail" to approximately 13-14 feet NAVD88 and provide approximately 5,688 square feet of upland habitat and approximately 2,268 square feet of tidal marsh habitat and install, use, and maintain park amenities such as trash containers, benches, and signs on the trail;
2. Excavate and maintain an approximately 31-foot-wide, 357-foot-long (11,056-square-foot) channel connecting the existing tidal channel known as "J-channel" to the diked pond;
3. Excavate an approximately 2,315-square-foot area to lower a berm to restore tidal action within the diked pond;
4. Excavate and maintain an approximately 305-square-foot area to restore tidal marsh habitat and raise the Harrier Trail;
5. Construct, use, and maintain an approximately 523-square-foot boat launch, supported by three one-foot diameter piles, an approximately 157-square-foot ramp, and an approximately 367-square-foot float;
6. Construct, use, and maintain an approximately 1,358-foot-long "Spur Trail" by placing approximately 26,916 cubic yards of soil within an approximately 25,122-square-foot area and install, use, and maintain park amenities such as trash containers, benches, and signs on the trail;
7. Conduct temporary construction activities, including staging, grading, installation of a silt curtain, and the construction of temporary construction access areas over tidal marsh;
8. Plant and seed upland and tidal marsh vegetation on fill and maintain vegetation; and
9. Install, use, and maintain an approximately five-foot-long fence along the new extended segment of the Harrier Trail.

Within the 100-foot shoreline band:

1. Conduct grading and excavation over an approximately 219,528-square-foot area to construct a 41,426-square-foot portion of the raised Harrier Trail and to restore tidal marsh, upland habitat, and tidal channels and introduce tidal action to the interior of the diked pond;
2. Construct, use, and maintain an approximately 183-linear-foot, 10-foot-wide Spur Trail;
3. Construct, use, and maintain an approximately 14-foot-wide, 50-foot-long truss bridge and associated abutments to span the breach at the site;

4. Install, use, and maintain an approximately 3,067-foot-long, four-foot-high habitat fence;
5. Construct, use, and maintain three 190-square-foot overlook areas with interpretive signage;
6. Plant and seed to establish upland and tidal marsh vegetation and maintain vegetation;
7. Install, use, and maintain park amenities such as trash containers, benches, interpretive signs, and wayfinding signs; and
8. Conduct temporary construction activities, including installation and removal of an approximately 125-foot-long pile-supported or berm coffer dam.

B. **Permit Application Date**. This authority is generally pursuant to and limited by the application dated April 6, 2017, including all accompanying and subsequent correspondence and exhibits, subject to the modifications required by conditions hereto.

C. **Deadlines for Commencement and Completion of Authorized Activities**. The activities authorized herein must commence prior to August 1, 2024, or this permit will lapse and become null and void. All construction work authorized herein must be diligently pursued to completion and completed within three years of project commencement or by November 30, 2027, whichever is earlier, unless an extension of time is sought from the Commission by the permittee and is granted by amendment of the permit. All maintenance authorized herein may be conducted in perpetuity so long as activities and uses authorized herein remain in place and as long as relevant property interests are valid.

D. **Project Summary**

1. **Bay Fill.** The project will involve the placement of approximately 33,651 square feet of fill in the Bay, including within existing tidal marsh, and approximately 13,676 square feet of excavation. The Bay fill will be primarily to raise and widen the existing public access pathways, provide marsh habitat, and to install a boat launch. The total area of impact to the Bay will be approximately 1.08 acres, including impacts to tidal marsh, tidal waters, and formerly filled tidelands at the adjacent property owned by McAvoy Yacht Harbor. The project will restore and enhance approximately 17.65 acres of tidal wetlands and waters within and outside of BCDC Bay jurisdiction. Of this 17.65 acres, approximately 17.3 acres will be tidal wetlands and waters that were previously not within BCDC Bay jurisdiction, but will be located within BCDC Bay jurisdiction post-restoration.
2. **Public Access.** The project will improve an approximately 1.1-mile-long existing trail along the existing berms at the site, and include the enhancement of the approximately 1,700-foot-long Spur Trail leading to a new boat launch for hand-launch boats (“boat launch”).

E. **Related BCDC Permits.** The Spur Trail and boat launch authorized herein are located within property owned by the owner of the McAvoy Yacht Harbor, and subject to public access requirements set forth in a stipulated judgment between the owner of McAvoy Yacht Harbor (Ronald P. Trost and Joyce L. Trost) and the Commission (BCDC Enforcement Case No. ER2015.051).

II. Special Conditions

The authorization made herein shall be subject to the following special conditions, in addition to the Standard Conditions contained herein:

A. **Specific Plans and Plan Review**

1. **Construction Documents**. The development authorized herein shall be built generally in conformance with the following documents:

   a. The plan set entitled "Bay Point Restoration and Public Access Project," prepared by ESA, Inc., and dated February 8, 2018.

   The permittee is responsible for assuring that all construction documents accurately and fully reflect the terms and conditions of this permit and any legal instruments submitted pursuant to this authorization. No substantial changes shall be made to these documents without prior review and written approval by or on behalf of the Commission through plan review or a permit amendment.

2. **Construction Documents Review and Approval.** No work whatsoever shall commence pursuant to this permit until final construction documents regarding authorized activities are approved in writing by or on behalf of the Commission. All documents are reviewed within 45 days of receipt. To save time, preliminary documents may be submitted prior to the submittal of final documents. A summary list of any changes that have taken place between the approved plans referenced in Special Condition II.A.1 and the final plans submitted for plan review shall be provided with the request for review. If the final construction document review is not completed by or on behalf of the Commission within the 45-day period, the permittee may carry out the project authorized herein in a manner consistent with the plans referred to in Special Condition II.A.1 of this permit.

   a. **Document Details.** All construction documents shall be labeled with: Mean High Water line or the upland extent of marsh vegetation no higher than +5 feet above Mean Sea Level and the tidal datum reference (NAVD88 or, if appropriate, Mean Lower Low Water (MLLW)); the corresponding 100-foot shoreline band; property lines; the location, types, and dimensions of materials, structures, and project phases authorized herein; grading limits; and the boundaries of public access areas required herein.

   b. **Conformity with Final Approved Documents.** All authorized development and uses shall conform to the final documents. Prior to use of the facilities authorized herein, the appropriate professional(s) of record shall certify in writing that the work covered by the authorization has been implemented in

accordance with the approved criteria and in substantial conformance with the approved documents. No substantial changes shall be made to these documents without prior review and written approval by or on behalf of the Commission through plan review or a permit amendment.

c. **Discrepancies between Approved Plans and Special Conditions**. In case of a discrepancy between final approved documents and the special conditions of this permit or legal instruments, the special condition shall prevail.

d. **Reconsideration of Plan Review.** The permittee may request reconsideration of a plan review action taken pursuant to this special condition within 30 days of a plan review action by submitting a written request for reconsideration to the Commission's Executive Director. Following the Executive Director's receipt of such a request, the Executive Director shall respond to the permittee with a determination on whether the plan review action in question shall remain unchanged or an additional review and/or action shall be performed by or on behalf of the Commission, including, but not limited to, an amendment to the permit and/or consultation with the Commission's Design Review Board.

B. **Public Access**

1. **Area**

a. **Total Public Access Area.** The 1.1-mile-long "Harrier Trail" and associated lookouts shall be made available exclusively to the public for unrestricted public access for walking, bicycling, sitting, viewing, picnicking, and related purposes, as generally shown on Exhibit A. Subject to Special Condition II.B.3, the 1,700-foot-long existing Spur Trail and boat launch shall be made available exclusively to the public for unrestricted public access for walking, bicycling, sitting, viewing, picnicking, and related purposes, as generally shown on Exhibit B. All public access improvements including, but not limited to, benches, lighting, signage, railings, trash containers, and interpretive exhibits shall be subject to final plan review approval pursuant to Special Condition II.A of this permit.

2. **Improvements Within the Total Public Access Area**. Upon completion of the project authorized herein, except as otherwise provided by this permit, the permittee shall install the following improvements, as generally shown on attached Exhibit A and Exhibit B:

a. **Harrier Trail.** An approximately 1.1-mile-long public pathway, approximately 8-12 feet wide, with asphalt paving or base rock and approximately two-foot-wide gravel shoulders, including an approximately 14-foot-wide steel truss bridge across the breach in the levee and five lookout areas with interpretive signage and benches;

b. **Spur Trail.** An approximately 1,700-foot-long public pathway, approximately 8-10 feet wide, with asphalt paving or base rock surfacing;

c. **Boat Launch.** An approximately 523-square-foot launch for small, hand-launch boats; and

d. **Public Access Signs.** At minimum, one public access sign at the entrance to the Harrier Trail and one public access sign at the entrance to the Spur Trail and one Great California Delta Trail sign at the Spur Trail. In addition, update way-finding signage at the parking lot to locate the boat launch and identify types of pavement. Install San Francisco Bay Water Trail signs in the event the boat launch is officially designated as such.

Such improvements shall be substantially consistent with the plans approved pursuant to Special Condition II.A of this authorization and generally conform to the plan set entitled "Bay Point Restoration and Public Access Project," prepared by ESA, Inc., and dated February 8, 2018 and the plan review of the subsequent construction documents as required in Special Condition II.A.2.

3. **Spur Trail and Boat Launch.** Prior to the construction of the Spur Trail improvements and boat launch authorized and required herein, the permittee shall obtain a property interest from the underlying landowner sufficient to construct and maintain the Spur Trail improvements and the boat launch and submit the property interest to the Commission. If the permittee cannot obtain a property interest, the Spur Trail and Boat Launch are not required to be constructed.

4. **Maintenance**. The areas and improvements within the total public access area shall be permanently maintained by and at the expense of the permittees or their assignees. Such maintenance shall include, but is not limited to, repairs to all path surfaces; replacement of any trees or other plant materials that die or become unkempt due to a failure to maintain the trees or plant materials; repairs or replacement as needed of any public access amenities such as signs, benches, trash containers and lights; periodic cleanup of litter and other materials deposited within the access areas; removal of any encroachments into the access areas; maintenance and repairs of damage due to flooding, and ensuring that the public access signs remain in place and visible. Within thirty (30) days after notification by staff of any maintenance deficiency, the permittee shall correct such deficiency or, if such deficiency is of a nature that cannot be feasibly be corrected within thirty (30) days, commence and thereafter pursue to completion correction of such deficiency.

5. **Assignment.** The permittees may transfer maintenance responsibility to a public agency or another party acceptable to the Commission provided that the transferee agrees in writing, acceptable to counsel for the Commission, to be bound by all terms and conditions of this permit.

6. **Reasonable Rules and Restrictions.** The permittees may impose reasonable rules and restrictions for the use of the public access areas to correct particular problems that may arise, and may regulate use of the site consistent with the rules and regulations contained in East Bay Regional Park District's Ordinance 38 and Public Resources Code

Sections 5541, 5558, 5559, and 5560. Any additional limitations, rules, and restrictions shall have first been approved by or on behalf of the Commission upon a finding that the proposed rules would not significantly affect the public nature of the area, would not unduly interfere with reasonable public use of the public access areas, and would tend to correct a specific problem that the permittees have both identified and substantiated. Rules may include restricting hours of use and delineating appropriate behavior.

C. **Marsh Restoration and Monitoring.**

1. **Monitoring Plan.** Within six months of the issuance of this permit, unless an extension of time is granted by or on behalf of the Commission, the permittee shall submit for review and comment, and then obtain approval of its final mitigation and monitoring plan (Final Monitoring Plan) by or on behalf of the Commission pursuant to the procedure provided for in Special Condition II.A. The final plan should be generally consistent with the draft *Mitigation and Monitoring Plan, Bay Point Restoration and Recreational Access Project* (ESA, January 31, 2018). The Final Monitoring Plan shall describe clearly state the project goals, describe the existing site conditions, monitor site features described in the approved construction plans, include appropriate reference sites consistent with habitat features, establish success criteria relevant to the project goals and transition periods of site development, and outline monitoring methods. Further, the Final Monitoring Plan shall describe either management measures to address issues associated with not meeting the success criteria, or a process to identify and implement management measures.

2. **Success Criteria**. The Final Monitoring Plan should include, at a minimum, provisions for monitoring channel development, inundation regime, sedimentation rates, changes in site elevation, tidal marsh vegetation establishment and survival, and invasive species colonization and use of the site. The impacted wetland area shall be restored to equal, or better than, pre-construction conditions, and non-native invasive plant species shall represent less than 5% of the total cover of the restored site unless otherwise provided for by the Final Monitoring Plan, and should also address non-native animal species control, particularly feral cats and other predators.

3. **Monitoring Reports.** Monitoring shall be conducted for a ten year monitoring period. Monitoring shall commence one year after breach of the levee (e.g., Year 1) and shall occur thereafter over a ten-year monitoring period at Year 1, Year 2, Year 3, Year 4, Year 5, Year 7, and Year 10, or as described in the Final Monitoring Plan required in Special Condition II.C.1. Monitoring reports shall be submitted by January 31 of the year following monitoring, and shall present the data collected, evaluate progress in light of restoration goals and criteria and provide information to inform any needed adaptive management. Reports shall include at a minimum the items listed above in Special Condition II.C.2, the Final Monitoring Plan, and provide photographic documentation of the site development in relevant areas. Should adverse conditions be identified during the ten-year monitoring period, the permittee shall make recommendations for implementation of adaptive

management measures based on an analysis of the project, including the monitoring data, and take adaptive management measures. Adaptive management measures shall be subject to review and approval by or on behalf of the Commission. The monitoring period may be extended based on the success of the project and any approved adaptive management measures.

4. **Resource Protection During Construction.** Work authorized by this permit shall be performed in a manner that will prevent, avoid, or minimize to the extent possible any significant adverse impact on any tidal marsh, other sensitive wetland resources, and existing native upland vegetation, outside of the construction of the restoration area. The permittee shall employ minimization measures, including:

   a. All in-water work, including pile-driving and excavation of tidal channels, shall avoid extreme tides and shall be confined to August 1 through November 30;

   b. Minimizing all traffic in marsh/mudflat areas, except as otherwise authorized herein;

   c. A qualified biologist identifying and marking areas of existing marsh vegetation to be protected;

   d. Installing salt marsh harvest mouse exclusion fencing;

   e. Installing a silt curtain during breaching and tidal excavation to prevent sedimentation or other construction-related impacts; and

   f. Driving piles by vibratory or non-impact methods, unless otherwise approved by the Commission and other agency approvals.

   If any unforeseen adverse impacts occur to any such areas as a result of the activities authorized herein, the permittee shall notify the Commission's staff and prepare an amended mitigation and monitoring plan detailing remedial actions. Further, the permittee, at a minimum shall restore the area to its previous condition, including returning disturbed areas to original elevation and soil composition, and monitor the same for re-establishment of marsh plant communities for two years. If the marsh plant community does not independently re-establish within two years, additional measures, such as seeding or planting may be required.

   Results of monitoring the impacted area shall be included in the annual monitoring reports described in Special Condition II.C.3. The impacted area monitoring results shall be summarized, and include the dominant species established, invasive species establishment and control, and estimates of percent absolute plant cover by native wetland species.

D. **Protection of Special Status Animal Species.**

1. **National Marine Fisheries Service.** The permittee shall construct the project authorized by this permit consistent with the Endangered Species Act (Section 7(a)(2)) Concurrence Letter and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response from the National Marine Fisheries

Service (NMFS), dated March 15, 2018, unless it is modified by NMFS. The permittee shall submit any amendment or modification to the NMFS consultation to the Commission.

2. **U.S. Fish and Wildlife Service.** The permittee shall construct the project authorized by this permit consistent with the Formal Consultation issued by the United States Fish and Wildlife Service (USFWS) (08FBDT00-2017-F-0199), dated December 4, 2017, unless it is modified by the USFWS. The permittee shall submit any amendment or modification to the USFWS biological opinion to the Commission.

E. **Water Quality Certification.** All construction activities in the Bay authorized herein shall comply with the requirements of the water quality certification dated October 2, 2018, issued by the Regional Water Quality Control Board (RWQCB), San Francisco Bay Region, unless it is modified by the RWQCB. The permittee shall submit any amendment or modification to the RWQCB approval to the Commission.

F. **State Lands Commission Lease.** Prior to construction within the area leased to the permittee by the State Lands Commission, the permittee shall submit to the Commission any amended lease or property interest necessary to construct the project.

III. Findings and Declarations.

This authorization is given on the basis of the Commission's findings and declarations that the work authorized herein is consistent with the McAteer-Petris Act, the *San Francisco Bay Plan* (Bay Plan), the California Environmental Quality Act (CEQA), and the Commission's amended management program for the San Francisco Bay segment of the California coastal zone for the following reasons:

A. **Site History and Description.** Beginning in the 1950s, the majority of the project site was diked-off from the Bay through a network of berms and used to settle and dry mined sand for commercial use. The existing site condition within the diked ponds includes both seasonal wetland and upland habitat and public access areas. A J-shaped channel ("J-channel") subject to tidal action was dredged to provide water access to the site through existing tidal marsh. Subsequently, the District purchased the property and, in 2001, prepared a Land Use Plan for Bay Point Regional Shoreline that included restoring the site to tidal action to assist in habitat recovery for special-status species and enhancing public access at the site. In 2008, the District constructed an all-weather trail along the top of the exterior berm ("Harrier Trail") and provided access to the trail by installing a parking lot, picnic benches, and a vault toilet at the end of McAvoy Road to the east of the restoration site (not part of the project authorized herein).

B. **Waterfront, Beach Priority-Use Area and Recreation.**

1. **Applicable Policies.** A portion of the site is located within a San Francisco Bay Plan-designated "Waterfront Park, Beach" Priority Use Area, identified on Bay Plan Map No. 3 as "Bay Point Wetlands Regional Park." Bay Plan Map No. 3, Note 7 states, "[r]estore tidal wetlands and provide opportunities for shoreline trail access, wildlife observation, and non-motorized small boat access." Further, Bay Plan Recreation Policy No. 4 provides, in part, that "to capitalize on the attractiveness of their [i.e., Waterfront Park Priority Use Areas] bayfront location, parks should emphasize hiking, bicycling, riding

trails, picnic facilities, swimming, environmental, historical and cultural education and interpretation, viewpoints, beaches, and fishing facilities…" and that "…public launching facilities for a variety of boats and other water-oriented recreational craft, such as kayaks, canoes and sailboards, should be provided in waterfront parks where feasible." Furthermore, "trails that can be used as components of the San Francisco Bay Trail, the Bay Area Ridge Trail or links between them should be developed in waterfront parks."

2. **Approved Project.** The Bay Point Restoration project will achieve the benefits provided for in the Bay Plan Map No. 3 Notes and the Recreation Policies.

   The project will restore wetlands and provide for improved public access at the site. The project will enhance existing wetlands at the site by excavating existing tidal marsh to create new tidal connections to the adjacent marsh, which is tidally active, and the restored area within the diked pond, and improve tidal circulation throughout the site. The project will restore new wetlands within the existing diked pond by grading the interior of the diked pond down to marsh elevation and filling portions of the site to construct tidal marsh and transition zones. The berm surrounding the diked pond will then be breached to provide tidal connections.

   The project will widen and repair existing public access trails in the area to enhance recreational opportunities. The existing perimeter trail along the berm surrounding the diked pond, known as the "Harrier Trail," will be raised and widened. The Harrier Trail will include fill for look-outs that provide views to the adjacent marsh. The "Spur Trail," currently required by a BCDC settlement agreement with neighboring McAvoy Harbor and constructed on filled Bay jurisdiction, is in a degraded condition and will be repaired and widened to provide an improved spur of the Great California Delta Trail. The project will include a new boat launch along the Spur Trail to provide non-motorized boat access to the Bay and the Delta.

As conditioned, the Commission finds that the project is consistent with the Waterfront Park, Beach Priority Use Area designation in the San Francisco Bay Plan and Recreation Policies in the San Francisco Bay Plan.

C. **Fill.**

1. **Applicable Policies.** The Commission may allow fill only when it meets the requirements identified in Section 66605 of the McAteer-Petris Act, which states, in part, that: (a) the public benefit of the fill should exceed the public detriment and the fill should be limited to water-oriented uses (such as recreation or public assembly) or be "minor" for improving shoreline appearance and public access; (b) fill should be approved only when "no alternative upland location" is available; (c) fill should be "the minimum amount necessary to achieve the [project] purpose;" (d) "the nature, location, and extent of any fill should be such that it will minimize harmful effects" to the Bay's resources, e.g., the volume, surface area or circulation of water, water quality, and fertility of marshes; (e) "fill [would] be constructed in accordance with sound safety standards which will afford reasonable protection to persons and property against the hazards of unstable geologic or soil conditions or of flood or storm waters…;" and (g) "fill should be authorized when the applicant has such valid title to the properties in question…."

2. **Public Benefit versus Detriment and Water-Oriented Use/Minor Fill for Public Access**. The overall purpose and goals of the project are to preserve, restore and enhance wetland habitats and to improve existing public access to the shoreline. The fill in the Bay, including in existing tidal marsh, would be placed primarily to raise and widen the existing public access pathways and to install a boat launch. Tidal marsh vegetation will revegetate on the slopes of the levee to provide transition zone functions. The fill associated with the project will provide public benefits through the four main components: 1) restoration and enhancement of tidal wetlands, tidal waters, and upland habitat; 2) improvements to the existing Harrier Trail to meet accessibility standards and raise the trail to decrease periodic flooding and increase sea-level rise resiliency; 3) installation of a new boat launch for hand-launch boats; and 4) improvements to an existing Spur Trail which will be a component of the Great California Delta Trail.

   Public detriments associated with the project include impacts to the existing tidal marsh from fill to achieve the benefits described above, which include restoring wetlands, improving the existing public access, and installing the boat launch. Excavation in tidal channels and tidal marsh to restore and enhance wetlands will impact existing marsh and subtidal habitats. The District states that these tidal marsh impacts, which total 1.08 acres including fill and excavation, will be offset by the project's environmental benefits of restoring and enhancing approximately 17.65 acres of wetlands. Pursuant to the Land Use Plan prepared by the District for the site, additional fill may be proposed in the future to expand the public access in the park and the District intends to also use the restoration project to offset potential impacts from that fill.

   In addition, the project would involve construction of the Spur Trail and boat launch within an open space area owned by the adjacent property owner and subject to a stipulated judgment that required restoration at the site (ER2015.051). The permittee must obtain a property interest prior to construction in this property as conditioned in Special Condition II.B.3. To the extent the project would impact the open space area required by the stipulated judgment, the project will offset those impacts through the wetland restoration and enhancement benefits of the project.

   The wetland restoration is a water-oriented use in that it involves enhancement to Bay habitat. The project also includes fill for public access. As described in more detail below, the District must fill existing tidal marsh and the Bay in order to accommodate widening the base of the existing berms to widen and raise the existing trails for accessibility for persons with disabilities and make the trails resilient to future sea level rise. As a result, the public benefits of the project exceed the public detriments from the fill and the fill associated with the project constitutes a minor amount of fill for public access.

3. **Alternative Upland Location.** Although fill in the Bay is necessary for the restoration work to connect existing upland and non-tidal areas to the tidal J-channel, the majority of tidal marsh restoration will take place in an upland diked pond currently cut off from tidal influence. Portions of the existing Harrier Trail are located immediately adjacent to the Bay. As part of trail improvements, the trail will be raised to provide resiliency with sea-level rise. In order to raise the trail, the base of the berm supporting the trail must be widened and extended into the Bay. In addition, the Spur Trail is in a degraded condition, and portions of it have subsided and have been overgrown with tidal marsh

vegetation. In order to repair the trail and raise it to comply with accessibility standards and resilience goals, the fill within the tidal marsh will be necessary to widen the base of the trail. There is no upland alternative that will provide for an accessible and resilient public access.

4. **Minimum Amount Necessary.** The fill in the Bay is necessary to create a wider and ADA-accessible trail and to ensure the public access is resilient to sea level rise. Some fill in existing tidal wetland areas is necessary because the required width and height of the public access could not be achieved by exclusively filling within the diked pond, outside of the Commission's Bay jurisdiction. The base of the berms that support the public access must be expanded to raise and widen the pathways. Tidal marsh will naturally reestablish on the slopes of the berms after construction. As a result, the project involves the minimum amount of fill necessary to achieve the purposes of the project.

5. **Effects on Bay Resources**. In addition to Section 66605(d) of the McAteer-Petris Act regarding the impacts of fill on Bay resources, the Bay Plan contains related policies, cited below.

    a. **Fill for Tidal Marsh Restoration and Mitigation.**

        i. **Applicable Mitigation and Tidal Marsh and Tidal Flats Policies.** BCDC Bay Plan Mitigation Policy No. 1 states, in part, that, "[p]rojects should be designed to avoid adverse environmental impacts to Bay natural resources such as to water surface area, volume, or circulation and to plants, fish, other aquatic organisms and wildlife habitat, subtidal areas, or tidal marshes or tidal flats. Whenever adverse impacts cannot be avoided, they should be minimized to the greatest extent practicable. Finally, measures to compensate for unavoidable adverse impacts to the natural resources of the Bay should be required."

        The Bay Plan Tidal Marshes and Tidal Flats Policy No. 4 states, in part, "Where feasible, former tidal marshes and tidal flats that have been diked from the Bay should be restored to tidal action in order to replace lost historic wetlands or should be managed to provide important Bay habitat functions, such as resting, foraging and breeding habitat for fish, other aquatic organisms and wildlife." In addition, Tidal Marsh and Tidal Flats Policy No. 2 states, in part, "where a transition zone does not exist and it is feasible and ecologically appropriate, shoreline projects should be designed to provide a transition zone between tidal and upland habitats." Tidal Marsh and Tidal Flats Policy No. 6 states, "[a]ny ecosystem restoration project should include clear and specific long-term and short-term biological and physical goals, and success criteria, and a monitoring program to assess the sustainability of the project. Design and evaluation of the project should include an analysis of: (a) how the system's adaptive capacity can be enhanced so that it is resilient to sea level rise and climate change; (b) the impact of the project on the Bay's sediment budget; (c) localized sediment erosion and accretion; (d) the role of tidal flows; (e) potential invasive species introduction, spread, and their control; (f) rates of colonization by vegetation; (g) the expected use of the site by fish, other aquatic organisms and wildlife; (h) an appropriate buffer, where feasible, between shoreline development and habitats to protect wildlife and provide space for marsh migration as sea level

rises; and (i) site characterization. If success criteria are not met, appropriate adaptive measures should be taken." Finally, Tidal Marsh and Tidal Flats Policy No. 7 states, "[b]ased on scientific ecological analysis and consultation with the relevant federal and state resource agencies, a minor amount of fill may be authorized to enhance or restore fish, other aquatic organisms or wildlife habitat if the Commission finds that no other method of enhancement or restoration except filling is feasible."

ii. **Tidal Marsh and Tidal Flats Restoration Overview.** The fill associated with the project will be placed to restore tidal marsh and improve public access pathways at the site. The amount of tidal marsh restoration (approximately 17 acres) resulting from the project will mitigate for any impacts to tidal marsh and Bay resources from the fill placed to accommodate the expansion of public access at the site (approximately 0.77 acres). The project will restore an existing diked pond that was once a historic tidal marsh and enhance existing adjacent tidal marsh to provide habitat. Inside and outside of the Commission's jurisdiction, the project will restore and enhance approximately 16.0 acres of tidal marsh and channel, 1.6 acres of tidal panne, and 10.1 acres of coastal grassland and coastal scrub. The tidal marsh restoration will benefit a variety of native and special-status species whose populations have declined because of tidal marsh habitat loss or fragmentation. Restoring tidal marsh at the site expands and connects with the existing narrow fringe of marsh that currently exists along the southern Suisun Bay. Historically, the majority of the project site was fully tidal. This project will restore the historic tidal function that has been lost from the sand mining use and other human activities.

iii. **Restoration Reference Sites.** To design the restoration project, the District used survey data from several reference sites to estimate tidal habitat elevation bands. The reference site used in the East Bay Regional Parks District Land Use Plan for Bay Point Regional Shoreline of 2001, the Mallard Slough Pump Station, was surveyed by LSA Associates, Inc. and KHA, Inc. in 2000, during which field staff surveyed three transects of representative marsh and described the vegetation types by elevation and horizontal width. In addition to the Mallard Slough data, ESA reviewed marsh habitat survey data from Lower Walnut Creek (ESA, 2015), Wings Landing (ESA, unpublished), and the greater Suisun Region (USBR et al., 2013; Orr and Sheehan, 2012). For each reference dataset, marsh plains were distinguished in two (low and high) or three (low, mid, high) categories. ESA used two categories, low and high marsh, consistent with the Mallard Slough data.

iv. **Tidal Marsh Design.** Higher elevation areas within the diked pond partially within the Commission's 100-foot shoreline band will be lowered to tidal marsh elevations and re-connected to the tides of Suisun Bay through the J-channel. Excavated material will be used to build gently-sloped transition zones from tidal marsh into upland habitat. Following site grading, the District anticipates that much of the tidal area will naturally recruit native species while higher areas will be re-vegetated with native plants and maintained as needed. Part of a remnant

berm that extends east of the restoration area, located north of the breach to the J-channel, will be lowered to tidal marsh elevations to eliminate it as a predatory access route into the marsh plain and bank of the J-channel.

The District developed the grading plan to restore a diversity of habitats while preserving existing pickleweed and alkali marsh flats as much as possible. Habitats will be interspersed throughout the restoration area to create a high level of habitat complexity at the site. Areas of higher ground are located adjacent to the restored marsh and in islands within the marsh to provide high tide refuge for terrestrial wildlife and room for the wetlands to migrate landward over time to accommodate sea level rise.

The restored brackish tidal marsh will be comprised of two general zones, low marsh and high marsh. Low marsh lies below Mean High Water (MHW) and will support species such as hardstem bulrush (*Schoenoplectus acutus var*. *occidentalis*), California bulrush (*Schoenoplectus californicus*) and cattail (*Typha latifolia*, *Typha dominguensis*). High marsh occurs between MHW and Highest Astronomical Tide (HAT) and subdivides further. The lower end of the high marsh zone, between MHW and Mean Higher High Water (MHHW), is expected to support some low marsh species and additional species such as Chairmaker's bulrush (*Schoenoplectus americanus*), alkali bulrush (*Bolboschoenus maritimus ssp. paludosus*), Baltic rush (*Juncus balticus*), and arrowgrass (*Triglochin maritima*). The higher end of the high marsh zone, between MHHW and HAT, is expected to support, pickleweed, saltgrass, marsh jaumea (*Jaumea carnosa*), alkali heath (*Frankenia salina*), marsh gumplant (*Grindelia stricta var. angustifolia*), Pacific silverweed (*Potentilla anserina ssp. pacifica*), salt marsh dodder (*Cuscuta salina*), western goldenrod (*Euthamia occidentalis*), salt marsh fleabane (*Pluchea odorata*), and salt marsh sand spurrey (*Spergularia spp*.).

The marsh zones will intergrade and be comprised of a mix of their component species, as dictated by soils, topography and hydrologic conditions (e.g., distance from channel). The areas of existing wetland vegetation that will remain are mostly within the high marsh elevation range, while low marsh will be created by excavating the surrounding areas to low marsh elevations. The District anticipates that the preserved areas of wetland on the project site, currently supporting a limited number of native plant species, will persist as high marsh wetlands dominated by pickleweed, saltgrass, and alkali heath, eventually evolving to support a higher diversity of species, including species typical of high marsh.

An existing pond to the northwest, primarily located within the Commission's 100-foot shoreline band jurisdiction, will be converted to a tidal panne. The panne will be surrounded by high marsh. The berms on the southern and eastern edges of this area will be lowered and graded to form gently sloping marsh ridges, designed to allow tidal flooding only on the highest (spring) tides. Converting the northwest pond to a tidal panne provides the benefit of preserving existing open water areas for a period of time, and will increase habitat diversity of the project site overall. In the longer term, sea level rise will

result in frequent inundation and deposition of sediment in the pond, which will facilitate eventual colonization by emergent marsh vegetation. Any open water will continue to provide foraging opportunities for shorebirds and potentially waterfowl. Over time, with sea-level rise, higher elevation habitat areas will convert to low marsh and mudflat. Other open water and mudflat areas will continue to exist along the J-channel and in created tidal channels.

Revegetation of low marsh areas with native species will occur through natural vegetative recruitment. No active revegetation is planned in the low marsh area. Though some native species are also expected to naturally recruit in the restored high marsh, the high marsh and upland areas will be seeded and planted to accelerate establishment of native vegetation and minimize invasive species. High marsh may be planted with plugs of species such as Baltic rush, Chairmaker's bulrush, pickleweed, and marsh gumplant and seeded with species such as saltgrass, and alkali heath. Temporary irrigation may be required for high marsh and upland plantings. Upland areas will be hydroseeded, hydromulched or drill seeded and mulched with a mix of native grasses and forbs to establish cover, prevent erosion, and build soil structure. Meadow barley seeds and creeping wildrye plugs may be installed in dense patches. Shrubs, such as California sagebrush and California buckwheat, may also be installed in clusters throughout the upland areas. Installation of container plants and plugs will follow the completion of construction and hydroseeding, depending on post construction in situ soil conditions, hydrology, predation and invasive weed pressures.

The project will have minimal impact on sedimentation in the Bay, but the restored tidal connections will allow for natural sedimentation to occur within the tidal marsh, allowing the marsh to migrate over time as sea level rises.

Project construction may temporarily impact existing tidal marsh from the use of marsh mats and heavy equipment. In addition, Special Condition II.C provides for best management practices to minimize impacts to tidal marsh during construction.

v. **Habitat Benefits.** The restoration will restore and enhance habitat for special-status species protected by the California Endangered Species Act and the Federal Endangered Species Act and other native species that are either known to occur or have potential to occur in or around the project site. These species include steelhead, Chinook salmon, Delta smelt, longfin smelt, Sacramento split-tail (Pogonichthys macrolepidotus), green sturgeon (Acipenser medirostris), Pacific herring (Clupea pallasi), Ridgway's rail, California black rail, salt marsh harvest mouse, among other species. The tidal panne, located within the higher marsh plain elevations partially within the 100-foot shoreline band, will be subject tidal water at longer intervals, increasing phytoplankton production and exports from the marsh and tidal channels to the channels and Suisun Bay, which could benefit Delta smelt and longfin smelt.

vi. **Monitoring and Success Criteria.** To monitor for success and ensure the project achieves its goals, the District prepared a draft monitoring plan entitled, *Mitigation and Monitoring Plan, Bay Point Restoration and Recreational Access Project* (ESA, January 31, 2018) (Draft Monitoring Plan). The Draft Monitoring Plan provides for 10 years of monitoring, with reports issued annually for the first five years and then reports in year six, eight, and ten. A Final Monitoring Plan is currently being reviewed for approval by the Army Corps of Engineers, the Regional Water Quality Control Board, and Commission staff. Special Condition II.C requires the permittee to submit the Final Monitoring Plan for review and approval by or on behalf of the Commission and sets forth standards for the final monitoring plan, consistent with the requirements of the Bay Plan and the provisions in the Monitoring Plan submitted with the application. As conditioned, the Final Monitoring Plan should incorporates monitoring of provisions for monitoring channel development, inundation regime, sedimentation rates, changes in site elevation, tidal marsh vegetation establishment and survival, and invasive species colonization and use of the site.

According to the Draft Monitoring Plan submitted with the application, re-delineation of the wetland will be conducted in Year 5. Based on results of the monitoring reports, adaptive management will be performed. Special Condition II.C requires the permittee to submit a Final Monitoring Plan for review and approval by or on behalf of the Commission and sets forth standards for the final monitoring plan, consistent with the requirements of the Bay Plan and the provisions in the Draft Monitoring Plan submitted with the application.

The Draft Monitoring Plan includes specific goals for hydrology and revegetation of the site. Within one-year post-breach, full tidal action will be achieved across the site, comparable to natural marshes in Suisun Bay. The site is expected to maintain full tidal action long-term. Fully tidal channels within the restoration area are expected to develop during water level monitoring in Years 1, 2, 4, and 10. The tidal panne is intended to retain water for periods up to 2 weeks to maximize aquatic food production and export. Tidal panne hydrology will be established by monitoring Year 2 and expected to continue when monitored in Years 4 and 10.

Within five years the marsh plain is expected to develop a nearly continuous fringe of native brackish marsh plants along the wetland margins, with intermittent patches of the same species scattered throughout the interior of the site. Immediately above this margin, high marsh species will colonize the transitional ecotone. Total cover by this vegetation is expected to progressively increase during the first five-year period. The invasive species population will be monitored on a quarterly basis throughout the 10-year monitoring period. The performance criterion originally proposed for the project for vegetation establishment is average cover of native and naturalized species in restored wetlands (based on interpretation of UAS aerial imagery) as follows:

Performance Criteria	
As built:	<5% cover
Year 1	4% cover
Year 2	7% cover
Year 4	15% cover
Year 10	50% cover

Special Condition II.C provides for an update and an increase in percentage of cover to this success criteria through the submission of a Final Monitoring Plan. As conditioned, the Commission finds the project is consistent with the Tidal Marsh and Tidal Flats and Mitigation policies in the Bay Plan and the requirements of the McAteer-Petris Act.

b. **Fish and Wildlife Impacts from Fill.**

i. **Applicable Fish and Wildlife Policies.** Fish, Other Aquatic Organisms and Wildlife Policy No. 1 of the San Francisco Bay Plan states, "[t]o assure the benefits of fish, other aquatic organisms and wildlife for future generations, to the greatest extent feasible, the Bay's tidal marshes, tidal flats, and subtidal habitat should be conserved, restored and increased." Fish, Other Aquatic Organisms and Wildlife Policy No. 3 states, "In reviewing or approving habitat restoration programs the Commission should be guided by the recommendations in the Baylands Ecosystem Habitat Goals report and should, where appropriate, provide for a diversity of habitats to enhance opportunities for a variety of associated native aquatic and terrestrial plant and animal species." Fish, Other Aquatic Organisms and Wildlife Policy No. 4 states, in part, that "[t]he Commission should consult with the California Department of Fish and [Wildlife] and the U.S. Fish and Wildlife Service or the National Marine Fisheries Service whenever a proposed project may adversely affect an endangered or threatened plant, fish, other aquatic organism or wildlife species… and give appropriate consideration of (their) recommendations in order to avoid possible adverse impacts of a proposed project on fish, other aquatic organisms and wildlife habitat." Fish, Other Aquatic Organisms and Wildlife Policy No. 5 states, "The Commission may permit a minor amount of fill or dredging in wildlife refuges, shown on the Plan Maps, necessary to enhance fish, other aquatic organisms and wildlife habitat or to provide public facilities for wildlife observation, interpretation and education."

ii. **Fish and Wildlife Impacts and Agency Consultations.** There are several special-status species that could be present at the site, including the salt marsh harvest mouse (Reithrodontomys raviventris), Ridgway's rail (*Rallus obsoletus*), and Delta smelt (*Hypomesus transpacificus*). The restoration will restore and enhance habitat for special-status or native species that are either known to occur or have potential to occur in or around the project site. These species include steelhead, Chinook salmon, Delta smelt, longfin smelt, Sacramento splittail (*Pogonichthys macrolepidotus*), green sturgeon (*Acipenser medirostris*), Pacific herring (*Clupea pallasi*), Ridgway's rail, California black rail, and salt

marsh harvest mouse, among other species. The California Department of Fish and Wildlife was not required to issue a Streambed Alteration Agreement or issue a take permit for the project.

On December 4, 2017, United States Fish and Wildlife Service (USFWS) issued a Formal Consultation (08FBDT00-2017-F-0199) determining that the project is likely to adversely affect salt marsh harvest mouse, Ridgway's rail, and Delta smelt and issued an incidental take permit for the project. USFWS concurred with the Corps determination that the project is not likely to adversely affect critical habitat for Delta smelt or soft bird's beak. The biological opinion recommended several Conservation Measures, including scheduling work to avoid extreme high tides and confining in-water work, including pile-driving and excavation of tidal channels, to August 1st through November 30th.

On May 15, 2018, the National Marine Fisheries Service (NMFS) issued an Endangered Species Act (Section 7(a)(2)) Concurrence Letter and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response and determined that the project is not likely to adversely affect species listed as threatened or endangered or critical habitats designated under the U.S. Endangered Species Act (ESA). NMFS also reviewed the project for potential effects on essential fish habitat (EFH) designated under the Magnuson-Stevens Fishery Conservation and Management Act. NMFS determined that the project may adversely impact EFH from degradation of water quality through elevated suspended sediment levels, and temporary reduction of prey resources through substrate disturbance and shading from the new boat launch dock. High levels of suspended sediment can reduce light penetration and lower the rate of photosynthesis for subaquatic vegetation, and may also, over time, reduce the primary productivity of adjacent aquatic areas. However, increased levels of suspended sediment are expected to be short-term, localized, and minor.

Special Condition II.D requires that the permittee construct the project consistent with the consultation from USFWS and NMFS. Furthermore, Special Condition II.C provides for requirements related to temporary impacts from construction to tidal marsh and marsh habitats, including fencing for special status species and to reduce impacts to other native species. As conditioned, the project is consistent with the requirements of the McAteer-Petris Act and the Bay Plan policies on Fish, Other Aquatic Organisms and Wildlife.

c. **Water Quality.** The Bay Plan policies on Water Quality state, in part, that "[t]he Bay's tidal marshes, tidal flats, and water surface area and volume should be conserved and, whenever possible, restored and increased to protect and improve water quality." In addition, "[w]ater quality in all parts of the Bay should be maintained at a level that will support and promote the beneficial uses of the Bay as identified in the San Francisco Bay Regional Water Quality Control Board's (RWQCB) Basin Plan…[and] the policies, recommendations, decisions, advice, and authority of the State Water Resources Control Board and the Regional Board should be the basis for carrying out the Commission's water quality responsibilities."

On October 2, 2018, the RWQCB issued a water quality certification for the project. The RWQCB required mitigation and monitoring of the project pursuant to the District's Monitoring Plan and determined that the restoration activities at the site will mitigation for the temporary and permanent impacts to tidal marsh and water quality resulting from the project. Special Condition II.E requires that the permittee construct the project consistent with the approval of the RWQCB. As conditioned, the project is consistent with the requirements of the McAteer-Petris Act and the Bay Plan policies on Water Quality.

6. **Climate Change.**

a. **Applicable Climate Change Policies.** In addition to Section 66605(e) of the McAteer-Petris Act regarding the seismic and flooding standards by which fill is designed and constructed, the Bay Plan contains related policies, cited below. The Bay Plan Safety of Fills Policy No. 4 states, in part, that "[a]dequate measures should be provided to prevent damage from sea level rise and storm activity that may occur on fill or near the shoreline over the expected life of a project…. New projects on fill or near the shoreline should…be built so the bottom floor level of structures will be above a 100-year flood elevation that takes future sea level rise into account for the expected life of the project."

Further, the Bay Plan Climate Change Policy No. 2 states, in part: "When planning shoreline areas or designing larger shoreline projects, a risk assessment should be prepared by a qualified engineer and should be based on the estimated 100-year flood elevation that takes into account the best estimates of future sea level rise and current flood protection and planned flood protection that will be funded and constructed when needed to provide protection for the proposed project or shoreline area. A range of sea level rise projections for mid-century and end-of-century based on the best scientific data available should be used in the risk assessment. Inundation maps used for the risk assessment should be prepared under the direction of a qualified engineer. The risk assessment should identify all types of potential flooding, degrees of uncertainty, consequences of defense failure, and risks to existing habitat from proposed flood protection devices." Climate Change Policy No. 3 state, in part, "[t]o protect public safety and ecosystem services, within areas that a risk assessment determines are vulnerable to future shoreline flooding that threatens public safety, all projects…should be designed to be resilient to a mid-century sea level rise projection."

Climate Change Policy No. 4, states, "[t]o address the regional adverse impacts of climate change, undeveloped areas that are both vulnerable to future flooding and currently sustain significant habitats or species, or possess conditions that make the areas especially suitable for ecosystem enhancement, should be given special consideration for preservation and habitat enhancement and should be encouraged to be used for those purposes." Climate Change Policy No. 7 states, in part, that "until a regional sea level rise adaptation strategy can be completed, the Commission should evaluate each project proposed in vulnerable areas on a case-by-case basis to determine the project's public benefits, resilience to flooding, and capacity to adapt to climate change impacts. The following specific types of projects have

regional benefits, advance regional goals, and should be encouraged, if their regional benefits and their advancement of regional goals outweigh the risk from flooding...[including] a natural resource restoration or environmental enhancement project." Tidal Marsh and Tidal Flats Policy No. 6 provides, in part, that restoration projects should be designed and evaluated to consider "how the system's adaptive capacity can be enhanced so that it is resilient to sea level rise and climate change."

b. **Resilience of Tidal Marsh Restoration Project.** The restoration project is designed for an approximately 30-year design-life to be resilient to sea level rise of two-feet and the public access features are designed to be resilient to 3.5 to 5.5 feet of sea level rise. The project design uses the high water level estimate recommended in the 2016 California State guidance (NRC, 2012) and incorporated scenarios from the Commission's Contra Costa County Adapting to Rising Tides Project (2016). In addition, the restored tidal marsh habitat transition zone was designed with an assumed 5.5 feet of sea level rise by 2100.

On March 2018, the Ocean Protection Council adopted an Update to the 2016 State of California Sea Level Rise Guidance (Updated Guidance). The updated guidance provides an approach to evaluate risk to a project by evaluating the potential impacts and adaptive capacity for the project life across a range of sea level rise projections and emissions scenarios to determine a probabilistic sea level rise projection for the project. Under the low risk aversion projection for sea level rise (1.1 feet at mid-century and 3.4 feet at end-of-century) in the Updated Guidance, low marsh will be inundated at the end-of-century, and gradually high marsh and transition zone will convert to low marsh and high marsh respectively. In a medium-high risk aversion analysis, the transition zone will convert to high marsh by the end of the project life at 2070, but will be flooded in low-water conditions at the end-of-century projection of 6.9 feet of sea level rise. The tidal marsh associated with the project will flood in 100-year storm event, but this extreme temporary flooding will not impact the viability of the habitat. Resilience of the public access improvements is discussed below.

The fill associated with the project is resilient to mid-century and the end of the project life, consistent with the requirements of the Safety of Fills, Climate Change, and Tidal Marsh and Tidal Flats policies of the Bay Plan.

7. **Valid Title**. The majority of the project site is owned by the East Bay Regional Park District. A portion of the existing northern marsh and J-channel is owned by the California State Lands Commission, and the District is in the process of amending its existing lease agreement to accommodate the project. Special Condition II.F requires the permittee to submit the amended lease to the Commission prior to construction of the project within the State Lands Commission lease area. A portion of the Spur Trail and boat launch will take place on property owned by an adjacent property owner. The District is in discussions to acquire an easement for this property to construct the trail improvements, boat launch, and conduct restoration activities and ongoing maintenance. Special Condition II.B.3 requires that all appropriate property interests will be obtained and submitted to the Commission prior to construction of the Spur Trail and boat launch. If a property interest is not obtained from the adjacent land owner, the

Spur Trail and boat launch could not be constructed consistent with the McAteer-Petris Act and those public access amenities would no longer be required as a condition of this permit. As conditioned, the project is consistent with the requirements of the McAteer-Petris Act on valid title.

Special Condition II.A is included to ensure the project is constructed consistent with the application and provides for plan review to ensure that construction complies with the requirements of the McAteer-Petris Act and the San Francisco Bay Plan. As conditioned, the Commission finds that the fill for the project is consistent with the McAteer-Petris Act and Bay Plan policies on allowable fill of the Bay.

D. **Public Access.**

1. **Applicable McAteer-Petris Act and San Francisco Bay Plan Policies.** In assessing whether the proposed project would provide maximum feasible public access consistent with the proposed activities, the Commission relies on the McAteer-Petris Act, the Bay Plan policies, access requirements of similar previously-permitted projects, and relevant court decisions. When the activity under consideration is proposed by a public agency, such as the District, the Commission also evaluates whether the proposed public access is reasonable in light of the project scope.

   Section 66602 of the McAteer-Petris Act states, in part, that "…existing public access to the shoreline and waters of the…[Bay] is inadequate and that maximum feasible public access, consistent with a proposed project, should be provided." Section 66632.4 of the McAteer-Petris Act states, "[w]ithin any portion or portions of the shoreline band that are located outside the boundaries of water-oriented priority land uses…the Commission may deny an application for a permit for a proposed project only on the grounds that the project fails to provide maximum feasible public access, consistent with the proposed project, to the bay and its shoreline."

   The Bay Plan policies on Public Access state, in part, that:

   - "A proposed fill project should increase public access to the Bay to the maximum extent feasible…";
   - "Access to and along the waterfront should be provided by walkways, trails, or other appropriate means and connect to the nearest public thoroughfare where convenient parking or public transportation may be available";
   - "[T]he improvements should be designed and built to encourage diverse Bay-related activities and movement to and along the shoreline, should permit barrier free access for persons with disabilities to the maximum feasible extent, should include an ongoing maintenance program, and should be identified with appropriate signs";

- "Public access to some natural areas should be provided to permit study and enjoyment of these areas. However, some wildlife are sensitive to human intrusion. For this reason, projects in such areas should be carefully evaluated in consultation with appropriate agencies to determine the appropriate location and type of access to be provided";
- "Public access should be sited, designed, managed and maintained to avoid significant adverse impacts from sea level rise and shoreline flooding";
- "Any public access provided as a condition of development should either be required to remain viable in the event of future sea level rise or flooding, or equivalent access consistent with the project should be provided nearby";
- "In some areas, a small amount of fill may be allowed if the fill is necessary and is the minimum absolutely required to develop the project in accordance with the Commission's public access requirements."

2. **Existing Site Conditions.** The majority of the site is part of Bay Point Regional Shoreline. The site provides views to Suisun Bay and opportunities for hiking, birdwatching, shoreline fishing, nature study, and other recreational activities. The site includes a parking lot, restrooms, picnic tables, and the 1.1-mile-long Harrier Trail, which loops around the diked pond. The existing Harrier Trail is 6 to 12 feet wide. The site is relatively flat and the Bay can be viewed from the majority of the site, except for a few areas where views are limited by existing upland mounds. The approximately 0.6-mile Spur Trail is also fully accessible to public, but is located on private property owned by the adjacent McAvoy Yacht Harbor outside of the Bay Point Regional Shoreline. The existing Spur Trail extends along the eastern edge of the J-channel from the vicinity of the parking lot north to Suisun Bay. The southern portion of the trail is a mix of dirt and gravel and travels along upland areas before extending into tidal wetlands near the northern edge of McAvoy Yacht Harbor. The trail averages approximately three feet wide. At the time of the issuance of this permit, the Spur Trail is in a relatively degraded condition, with vegetation and wetlands overgrowing on the pathway. Neither the Harrier Trail nor the Spur Trail meet current accessibility standards and periodically flood from storms and tides.

3. **Required Public Access.** The Bay Point Restoration Project will repair and enhance existing public access to the Bay and along the shoreline. The Harrier Trail will be upgraded to meet current accessibility standards for park visitors and provide all weather access for maintenance and emergency vehicles and will be elevated for resiliency with sea level rise. The Harrier Trail will be widened to between 8 to 12 feet wide, with asphalt paving and two-foot-wide gravel shoulders. The Harrier Trail will be raised to approximately 15 feet NAVD88. An approximately 14-foot-wide steel truss bridge will span the breach in the perimeter dike to allow continuous access around the restored diked pond. Lookouts within the shoreline band will be constructed at

northwest corner of the project site and within the diked pond. Lookouts will be comprised of an approximately 60-foot diameter pad graded to accommodate a paved turnaround radius for District maintenance vehicles and include a five-foot-wide perimeter buffer for lookout signage and benches. To reduce conflicts between adjacent wildlife and public use of the trail, a four-foot-high fence with a gap for wildlife passage will be constructed along the Harrier Trail to restrict access to the restoration area. Additionally, signage, interpretative panels, lookout points, and benches will be installed along the trail.

The approximately 1,700-foot-long Spur Trail adjacent to McAvoy Yacht Harbor will be raised to elevation 12 feet NAVD88, widened to between 8 to 10 feet, and surfaced with base rock. This trail will serve as a spur to the Great California Delta Trail and will provide access to a boat launch along the tidal channel. The Spur Trail will be constructed within a public access area required by a stipulated judgment (BCDC Enforcement Case No. ER2015.051) with the neighboring McAvoy Harbor recreational boat marina. The District will enter into an easement with the owners of McAvoy Harbor, and some of the public access responsibilities required of the McAvoy Yacht Harbor under the stipulated judgment will be satisfied by a permit approved to the District for development of the Spur Trail and restoration at the site, as described in a letter issued by Commission staff to the District and McAvoy Yacht Harbor on April 27, 2018.

In an earlier design for the project, the District explored including a pile-supported boardwalk extending over tidal marsh to connect the Spur Trail north to the shoreline of Suisun Bay. This element was removed from the design due to cost and permitting considerations. However, the District may revisit the proposal in the future.

No formal launch site currently exists at, or near, the site for small hand-launch boats. A new boat launch will be constructed along the J-channel to provide boat or hand launched vessel access to the J channel. The new launch will consist of an 80-foot-long, three-foot-wide gangway extending from the existing Spur Trail onto a low-freeboard floating dock in the J channel. The gangway will be secured to land by a foundation at the Spur Trail. The District located the boat launch in its location due to its vicinity to the deeper water in the existing tidal channel. A location closer to the parking lot, while more convenient for loading, will not have been viable due to the water levels in the channel.

While the Harrier Trail will be greatly improved by the project, the boat launch is the only new public access amenity provided. The District states there is not space on the site to provide for new trails without filling existing wetlands or reducing the area for tidal marsh restoration.

Special Condition II.B requires the improvements to the Harrier Trail, including a number of site amenities, and the Spur Trail, and requires construction of the boat launch. Special Condition II.A provides for plan review prior to construction to ensure the project is constructed in accordance with these requirements. Special Condition II.B.4 requires maintenance of the public access amenities. Special Condition II.B.5 requires

notice to the Commission of assignment of maintenance responsibilities and Special Condition II.B.6 provides for Commission approval of any reasonable rules and restrictions imposed on the public access by the permittee.

The Spur Trail and boat launch will be constructed on adjacent property owners land, requiring a property interest in order to be constructed. Special Condition II.B.3 requires the permittee to obtain a property interest and submit that interest to the Commission prior to the construction of the Spur Trail and the boat launch. In the event that a property interest cannot be obtained, the Spur Trail and boat launch would not constitute feasible public access amenities, and therefore the construction of those amenities would not be required by the permit.

4. **Sea Level Rise and Flooding.** The District designed the public access improvements to be resilient beyond the life of the restoration project of 2070. The Harrier Trail will be elevated to 13.5 to 15 feet NAVD88, which will be resilient to seasonal water levels beyond an end-of-century projection of 6.9 feet under the medium-high risk aversion projection in the Updated Guidance. The Spur Trail will be raised to approximately 12 feet NAVD88, making the Spur Trail resilient to a sea level rise projection of 3.5 feet to the end of the project life of 2070. At an end-of-century projection of 6.9 feet, the Spur Trail could be flooded at high water. The boat launch will be constructed to a height equivalent to the Spur Trail. It is likely that all pathways will be flooded in an extreme 100-year storm event.

5. **Comparable BCDC-Permitted Project.** The Commission approved similar projects in the past. The project by the East Bay Regional Park District to restore Dotson Family Marsh (formerly known as Breuner Marsh) (BCDC Permit No. M2013.009.01) was approved by the Commission in 2014 through a material amendment to an existing administrative permit. The project resulted in the creation of 6.12 acres of new tidal wetlands and 4.19 acres of new seasonal wetlands, and enhancement of 27.05 acres of existing tidal wetlands and 4.2 acres of existing seasonal wetlands. The project included the construction of an approximately 1.25-mile-long segment of the Bay Trail, including a boardwalk, an approximately 0.25-mile-long spur trail, public access parking, picnic areas, overlooks, and boardwalks. In contrast to the design for the Bay Point Restoration Project, some of the public access associated with the Dotson Family Marsh restoration was not designed to be viable beyond mid-century sea level rise projections.

As conditioned, the Commission finds that the public access amenities provided by the project constitutes the maximum feasible public access consistent with the project.

E. **Review Boards**

1. **Engineering Criteria Review Board.** The ECRB did not review the project because the Commission staff determined that the fill does not raise significant seismic safety issues.

2. **Design Review Board.** The DRB did not review the project because the Commission staff determined the public access development did not raise significant design considerations.

F. **Environmental Review.** On February 21, 2001, the East Bay Regional Park District as lead agency for the project adopted a Final Initial Study and Mitigated Negative Declaration. On May 31, 2017, the District adopted an addendum to the Final Initial Study and Mitigated Negative Declaration.

G. **Coastal Zone Management Act.** The Commission further finds, declares, and certifies that the activity or activities authorized herein are consistent with the Commission's Amended Management Program for San Francisco Bay, as approved by the Department of Commerce under the Federal Coastal Zone Management Act of 1972, as amended.

H. **Conclusion.** For all the above reasons, the Commission finds, declares, and certifies that, subject to the Special Conditions stated herein, the project authorized herein is consistent with the McAteer-Petris Act, the San Francisco Bay Plan, the Commission's Regulations, the California Environmental Quality Act, and the Commission's Amended Management Program for the San Francisco Bay segment of the California coastal zone.

IV. Standard Conditions

A. **Permit Execution**. This permit shall not take effect unless the permittee(s) execute the original of this permit and return it to the Commission within ten days after the date of the issuance of the permit. No work shall be done until the acknowledgment is duly executed and returned to the Commission.

B. **Notice of Completion**. The attached Notice of Completion and Declaration of Compliance form shall be returned to the Commission within 30 days following completion of the work.

C. **Permit Assignment**. The rights, duties, and obligations contained in this permit are assignable. When the permittees transfer any interest in any property either on which the activity is authorized to occur, or which is necessary to achieve full compliance of one or more conditions to this permit, the permittee(s)/transferors and the transferees shall execute and submit to the Commission a permit assignment form acceptable to the Executive Director. An assignment shall not be effective until the assignees execute and the Executive Director receives an acknowledgment that the assignees have read and understand the permit and agree to be bound by the terms and conditions of the permit, and the assignees are accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the permit.

D. **Permit Runs with the Land**. Unless otherwise provided in this permit, the terms and conditions of this permit shall bind all future owners and future possessors of any legal interest in the land and shall run with the land.

E. **Other Government Approvals**. All required permissions from governmental bodies must be obtained before the commencement of work; these bodies include, but are not limited to, the U. S. Army Corps of Engineers, the State Lands Commission, the Regional Water Quality Control Board, and the city or county in which the work is to be performed, whenever any of these may be required. This permit does not relieve the permittee(s) of any obligations imposed by State or Federal law, either statutory or otherwise.

F. **Built Project must be Consistent with Application**. Work must be performed in the precise manner and at the precise locations indicated in your application, as such may have been modified by the terms of the permit and any plans approved in writing by or on behalf of the Commission.

G. **Life of Authorization**. Unless otherwise provided in this permit, all the terms and conditions of this permit shall remain effective for so long as the permit remains in effect or for so long as any use or construction authorized by this permit exists, whichever is longer.

H. **Commission Jurisdiction**. Any area subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission under either the McAteer-Petris Act or the Suisun Marsh Preservation Act at the time the permit is granted or thereafter shall remain subject to that jurisdiction notwithstanding the placement of any fill or the implementation of any substantial change in use authorized by this permit. Any area not subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission that becomes, as a result of any work or project authorized in this permit, subject to tidal action shall become subject to the Commission's "bay" jurisdiction.

I. **Changes to the Commission's Jurisdiction as a Result of Natural Processes**. This permit reflects the location of the shoreline of San Francisco Bay when the permit was issued. Over time, erosion, avulsion, accretion, subsidence, relative sea level change, and other factors may change the location of the shoreline, which may, in turn, change the extent of the Commission's regulatory jurisdiction. Therefore, the issuance of this permit does not guarantee that the Commission's jurisdiction will not change in the future.

J. **Violation of Permit May Lead to Permit Revocation**. Except as otherwise noted, violation of any of the terms of this permit shall be grounds for revocation. The Commission may revoke any permit for such violation after a public hearing held on reasonable notice to the permittee(s) or their assignees if the permit has been effectively assigned. If the permit is revoked, the Commission may determine, if it deems appropriate, that all or part of any fill or structure placed pursuant to this permit shall be removed by the permittee(s) or their assignees if the permit has been assigned.

K. **Should Permit Conditions Be Found to be Illegal or Unenforceable**. Unless the Commission directs otherwise, this permit shall become null and void if any term, standard condition, or special condition of this permit shall be found illegal or unenforceable through the application of statute, administrative ruling, or court determination. If this permit becomes null and void, any fill or structures placed in reliance on this permit shall be subject to removal by the permittee(s) or their assignees if the permit has been assigned to the extent that the Commission determines that such removal is appropriate. Any uses authorized shall be terminated to the extent that the Commission determines that such uses should be terminated.

L. **Permission to Conduct Site Visit**. The permittee(s) shall grant permission to any member of the Commission's staff to conduct a site visit at the subject property during and after construction to verify that the project is being and has been constructed in compliance with the authorization and conditions contained herein. Site visits may occur during business hours without prior notice and after business hours with 24-hour notice.

M. **Abandonment**. If, at any time, the Commission determines that the improvements in the Bay authorized herein have been abandoned for a period of two years or more, or have deteriorated to the point that public health, safety or welfare is adversely affected, the Commission may require that the improvements be removed by the permittee(s), its assignees or successors in interest, or by the owner of the improvements, within 60 days or such other reasonable time as the Commission may direct.

N. **Best Management Practices**

1. **Debris Removal.** All construction debris shall be removed to an authorized location outside the jurisdiction of the Commission. In the event that any such material is placed in any area within the Commission's jurisdiction, the permittee, its assigns, or successors in interest, or the owner of the improvements, shall remove such material, at their expense, within ten days after they have been notified by the Executive Director of such placement.

2. **Construction Operations.** All construction operations shall be performed to prevent construction materials from falling, washing or blowing into the Bay. In the event that such material escapes or is placed in an area subject to tidal action of the Bay, the permittee shall immediately retrieve and remove such material at its expense.

O. **In-Kind Repairs and Maintenance.** Any in-kind repair and maintenance work authorized herein shall not result in an enlargement of the authorized structural footprint and shall only involve construction materials approved for use in San Francisco Bay. Work shall occur during periods designated to avoid impacts to fish and wildlife. The permittee(s) shall contact Commission staff to confirm current restricted periods for construction.

LOOKOUT AREAS

50 FT DIA AC WITH 5 FT AB SHOULDERS

VEHICLE TURNOUT AND LOOKOUT AREA

HARRIER TRAIL TYPE 2
8 FT WIDE AB WITH
2 FT SHOULDERS
L = 2,134 FT

BCDC BAY JURISDICTION

BCDC 100–FT SHORELINE BAND

VEHICLE TURNOUT AND LOOKOUT

EXISTING WETLAND HABITATS TO BE PROTECTED

BRIDGE
(L=50 FT, W=14 FT)

RESTORATION AREA

VEHICLE TURNOUT AND LOOKOUT AREA

(E) FENCE

HARRIER TRAIL TYPE 1
10 FT AC
2 FT AB SHOULDERS
L = 2,980 FT

VEHICLE TURNOUT

VEHICLE TURNOUT AND LOOKOUT AREA

RAIL ROAD

PROPERTY BOUNDARY

(E) FENCE

C.C.S.D. SEWER EASEMENT

GCDT SPUR TRAIL

(E) EBRPD PARKING, RESTROOMS & TABLES

MATCH LINE, SEE BELOW

MATCH LINE, SEE ABOVE

(E) GRAVEL ENTRANCE ROAD
ACCESS VIA MACAVOY RD

BCDC BAY JURISDICTION (UP TO 8.77 FT NAVD88 OR UPLAND BUFFER)

BCDC 100–FT SHORELINE BAND (100 FT INLAND OF BCDC BAY)

N

0 75 150
SCALE (FEET)

DWG: \\sfo-fil01\esapwa\Data\projects_2016\D160376.00 - Bay Point Restoration_Public Access Project\10 CAD\Dwgs\Public Access Figures\Fig_1-12A-B_aerial.dwg USER: James.Jackson PLOT DATE: 11/9/2018 10:45:04 AM

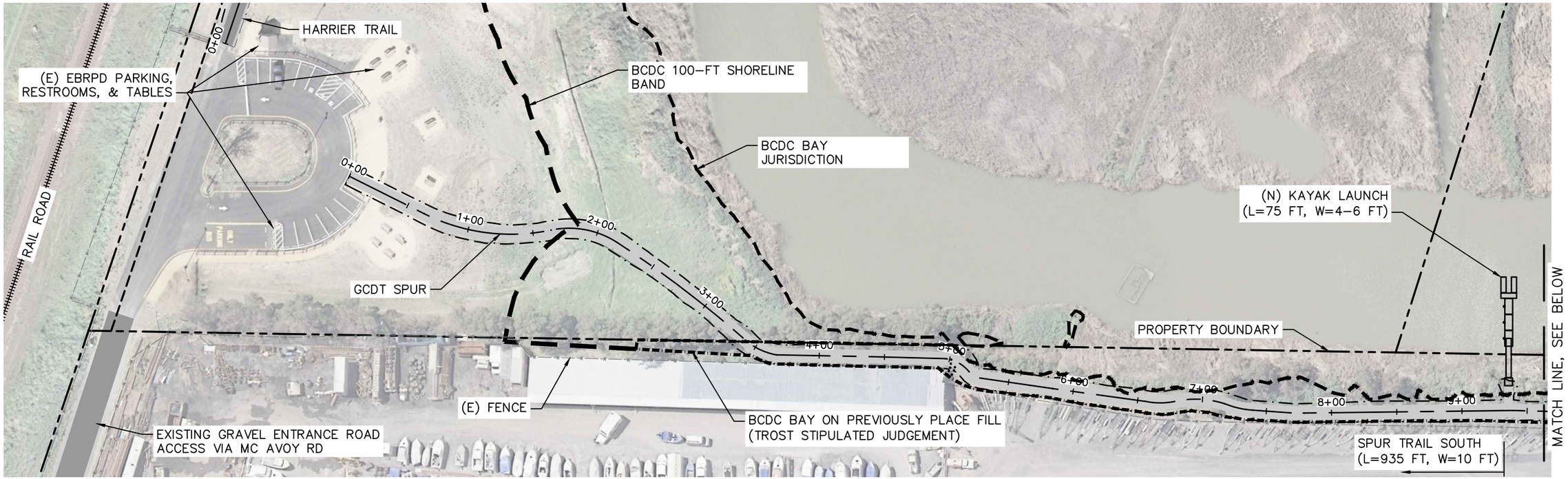
November 9, 2018

Bay Point Restoration . D160376.00

BCDC PERMIT NO. 2017.006.00 **Exhibit A**

Public Access Plan
Harrier Trail

ESA



BCDC BAY JURISDICTION (UP TO 8.77 FT NAVD88 OR UPLAND BUFFER)
BCDC 100–FT SHORELINE BAND (100 FT INLAND OF BCDC BAY)
BCDC BAY ON PREVIOUSLY PLACED FILL (TROST STIPULATED JUDGEMENT) WITHIN PROJECT BOUNDARY

November 9, 2018

Bay Point Restoration . D160376.00

BCDC PERMIT NO. 2017.006.00 **Exhibit B**
Public Access Plan
Spur Trail

ESA